

**BRIAN M. BABB**  
DIRECT DIAL: (513) 579-6963  
FACSIMILE: (513) 579-6457  
E-MAIL: BBABB@KMKLAW.COM

Received

JUN 17 2013

Emergency Enforcement  
Services Section

June 13, 2013

**VIA UPS**

Ms. Carol Ropski  
U.S. Environmental Protection Agency  
Superfund Division  
Enforcement and Compliance Assurance Branch  
Enforcement Services Section 1, SE-5J  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

RE: South Dayton Dump and Landfill Site

Dear Ms. Ropski:

This letter is provided on behalf of our client, A.E. Fickert, Inc., and serves as a follow-up response to a September 10, 2012 General Notice of Potential Liability letter (copy attached) concerning the South Dayton Dump and Landfill Site in Moraine, Ohio that was sent by the United States Environmental Protection Agency to our client to which a response was not previously provided. It is our sincere belief A.E. Fickert, Inc. has no liability under CERCLA for the South Dayton Dump and Landfill Site for the simple reason A.E. Fickert, Inc. was a newly created corporate entity in 2004 and did not exist during the operation of or prior to the closing of the South Dayton Landfill and Dump Site in 1996. More detailed information to support this position is noted below for your review and consideration.

First, in May 2004, our client, formerly known as "AEF Acquisition Company, Inc." (Charter No. 1463884), entered into a contract to purchase the assets of "A.E. Fickert & Son, Inc" (Charter No. 289208). That respective transaction was an asset, not a stock, transaction. That transaction was documented in a May 17, 2004 "Asset Purchase Agreement," which document is not provided due to a contractual nondisclosure obligation. If necessary, a redacted copy can be provided upon execution of a confidentiality agreement. Our client, AEF Acquisition Company, Inc. (Charter No. 1463884), also purchased the real property of Robin and Keith Fickert under a May 17, 2004 "Agreement for Purchase and Sale of Property," a copy of which is not being disclosed due to a contractual nondisclosure obligation. Robin and Keith Fickert were the shareholders of A.E. Fickert & Son, Inc. (Charter No. 289208), who sold its assets to AEF Acquisition Company, Inc. (Charter No. 1463884) under the Asset Purchase Agreement. Our client's purchase of the assets of A.E. Fickert & Son, Inc. (Charter No. 289208) was also documented in a May 27, 2004 "Bill of Sale," a copy of which is not being provided due to a nondisclosure obligation. There are also other corporate documents associated with this transaction that also demonstrate it was an arms-length asset sale and purchase transaction between independent, unrelated parties.



Second, AEF Acquisition Company, Inc. (Charter No. 1463884) was created on May 17, 2004, and the Ohio Secretary of State's Good Standing Certificate is attached (Exhibit A). The assets purchased by AEF Acquisition Company, Inc. included the name "A.E. Fickert & Son, Inc." On or about March 17, 2005, AEF Acquisition Company, Inc. (Charter No. 1463884) filed an Amendment to its Articles of Incorporation to change its name to "A.E. Fickert & Son, Inc." (Exhibit B), which Certificate was issued on March 21, 2005 (Exhibit C), and on November 26, 2007 further amended its Articles of Incorporation to change its name to "A.E. Fickert, Inc.," which documented name change is attached (Exhibit D) (Charter No. 1463884).

Third, A. E. Fickert & Son, Inc. (Charter No. 289208) was incorporated on March 23, 1960, and a copy of its Articles of Incorporation is attached (Exhibit E). This entity (Charter No. 289208) was in good standing in May 2004 when it sold its assets, including its name, to AEF Acquisition Company, Inc. (Charter No. 1463884) (Exhibit F). On or about June 21, 2004, A.E. Fickert & Son, Inc. (Charter No. 289208) filed a Certificate of Amendment to change its name to Fickert Devco, Inc. (Exhibit G). On June 30, 2004, A. E. Fickert & Son, Inc. (Charter No. 289208) received a Certificate from the Secretary of State (Exhibit H) reflecting a change in its name to "Fickert Devco, Inc." (Charter No. 289208). Fickert Devco, Inc. is still a corporate entity in existence and in good standing (Exhibit I).

The entity A.E. Fickert, Inc. (Charter No. 1463884) and its predecessors in name (AEF Acquisition Company, Inc. and A.E. Fickert & Son, Inc.) do not have any legal or corporate relationship with A.E. Fickert & Son, Inc. (nka Fickert Devco, Inc.) (Charter No. 289208).

Fourth, for A.E. Fickert, Inc. (Charter No. 1463884) to have CERCLA liability at the South Dayton Dump it needs to be either an arranger or generator, transporter of hazardous substances, the prior owner or operator of the facility during disposal, or the current owner or operator of the disposal facility. Since A.E. Fickert, Inc. is not any of the above-described liable parties, A.E. Fickert, Inc. is not a person that has liability under CERCLA at the South Dayton Dump.

Fifth, A.E. Fickert, Inc. (Charter No. 1463884) is not the corporate successor to A.E. Fickert & Son, Inc. (nka Fickert Devco, Inc.) (Charter No. 289208) and does not have any corporate successor liability for A. E. Fickert & Son, Inc. with respect to the South Dayton Dump. Under Ohio law, the general rule is that in a sale of assets by one company from another, the successor corporation is not liable for the debts and obligations of the seller subject to the following exceptions: a) there is an expressed or implied assumption of liability; b) the transaction constituting the sale of assets amounts to a de facto merger or consolidation; c) the purchaser corporation is a mere continuation of the seller corporation; or d) the transaction is a fraudulent attempt to escape liability.

A.E. Fickert, Inc. (Charter No. 1463884) does not satisfy any of the foregoing requirements for successor liability for the following reasons. 1) A.E. Fickert, Inc. (Charter No. 1463884) did not expressly or impliedly assume A.E. Fickert & Son, Inc.'s (Charter No. 289208) environmental liabilities under the Asset Purchase Agreement. The "Assumed Liabilities" enumerated in Part 1.03 of the Disclosure Schedule of the Asset Purchase Agreement contain no references to any environmental liabilities in general or with respect to the South Dayton Dump. In addition, Section 1.04(c) of the Asset Purchase Agreement expressly provides that A.E. Fickert, Inc. does not assume "any liability or obligation with respect to any suits, actions, claims





June 13, 2013

Page 3

or Proceedings arising out of, resulting from or related to the operation of the [A.E. Fickert & Son, Inc.] on or prior to Effective Time, whether known, unknown, contingent or otherwise.” 2) The sale and purchase of the assets of A.E. Fickert & Son, Inc. was an arm-length transaction between unrelated entities and was not a de factor merger or consolidation of two corporate entities, and both entities maintain an independent existence. 3) A.E. Fickert, Inc. is not a mere continuation of A.E. Fickert & Son, Inc. since there are different and independent officers and management, there has been no dissolution of the seller, there was no assumption of the ordinary business obligations and liabilities of the seller by the buyer, and A.E. Fickert, Inc. has not held itself out to be the continuation of A.E. Fickert & Son, Inc. The owner, president, and sole shareholder of A.E. Fickert, Inc. (Charter No. 1463884) is Michael Bacevich. The owners and shareholders of A. E. Fickert & Son, Inc. (Charter No. 289208) are Robin and Keith Fickert. 4) There is nothing to indicate the sale and purchase of the respective assets was for a fraudulent purpose to escape liability.

Sixth, based on U.S. EPA’s response to our FOIA request, the only relevant document tying “A.E. Fickert” to the South Dayton Dump is the deposition of Edward Grillot on April 24, 2012 in litigation between various PRPs concerning CERCLA cost recovery and contribution claims pertaining to the South Dayton Dump, which testimony references waste disposal by “A.E. Fickert & Son” in the 1960-1970s.

Given that our client, A. E. Fickert, Inc. (Charter No. 1463884), did not exist prior to 2004, is unrelated to A.E. Fickert & Son, Inc. (Charter No. 289208), and did not assume A.E. Fickert & Son, Inc.’s liabilities when it purchased its assets in 2004, A.E. Fickert, Inc. does not and could not have any liability for any waste disposal activities at the South Dayton Dump and Landfill Site. Respectfully, I am requesting written confirmation that U.S. EPA does not consider A.E. Fickert, Inc. to be a potentially responsible party with respect to the South Dayton Dump and Landfill Site, and that EPA’s September 10, 2012 General Notice of Potential Liability letter should have been sent to A.E. Fickert & Son, Inc. (nka Fickert Devco, Inc.) (Charter No. 289208), and not to A.E. Fickert, Inc. (Charter No. 1463884).

Your attention to this matter would be much appreciated. Should you have any questions or need additional information please do not hesitate to contact me. Thank you for your cooperation and assistance.

Sincerely,

KEATING MUETHING & KLEKAMP PLL

By: 

Brian M. Babb

BMB:drl

Enclosures

cc: Michael Bacevich, Esq.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SE-5J

SEP 10 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

[FOR A.E. FICKERT, INC.]  
MICHAEL P BACEVICH,  
A.E. FICKERT & SON, INC.  
2908 SPRINGBORO WEST  
DAYTON, OH 45439

US EPA RECORDS CENTER REGION 5



443632

Re: South Dayton Dump and Landfill Site in Moraine, Ohio  
Site Spill Identification Number: B52B  
General Notice of Potential Liability

Dear Sir or Madam:

The U.S. Environmental Protection Agency has documented the release or threat of release of hazardous substances, pollutants and contaminants into the environment from the above-referenced Site and is planning to spend public funds to control and investigate these releases. This action will be taken by EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. §§ 9601-9675, unless EPA determines that such action will be done properly by a responsible party or parties. Responsible parties under CERCLA include the current and former owners and operators of the Site, and persons who generated the hazardous substances or were involved in the transport, treatment or disposal of the hazardous substances at the Site. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), where EPA uses public funds towards the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the Site, including investigation, planning and enforcement costs.

EPA is currently planning to conduct the following actions at the above-referenced Site:

1. Develop and implement a Site Health and Safety Plan.
2. Conduct subsurface gas sampling including Volatile Organic Compounds (VOCs) and methane, and conduct extent of contamination sampling utilizing groundwater, soil gas, sub-slab, and indoor air sampling techniques.
3. If the Ohio Department of Health (ODH) Sub-Slab Air Screening Level for a contaminant





of concern (TCE, PCE, methane, etc) is exceeded for an off-site residential or commercial structure, design and install a vapor abatement mitigation system in the structure(s) impacted by subsurface gas migration. The abatement system will include installation of a sub-slab depressurization system (SSDS) or crawl space depressurization system, sealing cracks in walls and floors of the basement, and sealing drains that could be a pathway. The vapor abatement mitigation system will be designed to control levels of methane and VOCs to below ODH sub-slab and indoor air screening levels.

4. If the ODH Sub-Slab Air Screening Level for a contaminant of concern (TCE, PCE, methane, etc) is exceeded for an on-site commercial structure, design and install a vapor abatement mitigation system in the structure(s) impacted by subsurface gas migration. The abatement system will include installation of a sub-slab depressurization system (SSDS), sealing cracks in walls and floors, and sealing drains that could be a pathway. The vapor abatement mitigation system will be designed to control levels of methane and VOCs to below ODH sub-slab and indoor air screening levels.
5. If levels of methane at the property boundary are greater than the lower explosive limit (5% methane), design and install a perimeter landfill gas extraction system designed to prevent landfill gas migration off-site. The perimeter landfill gas system will be designed to control levels of methane at the property boundary to less than the lower explosive limit (5% methane).
6. Develop and implement a performance sample plan to confirm that ODH screening levels are achieved for contaminants of concern following installation of on-site or off-site vapor abatement mitigation systems.
7. If necessary, develop and implement: (1) a perimeter landfill gas extraction system performance sample plan including the installation of perimeter subsurface probes to confirm that methane action levels are achieved and (2) a landfill gas extraction system effluent sample plan.

EPA has received information that your organization may have owned or operated the Site or generated or transported hazardous substances that were disposed of at the Site. By this letter, EPA notifies you of your potential liability with regard to this matter and encourages you, as a potentially responsible party, to agree to reimburse EPA for costs incurred to date and to voluntarily perform or finance the response activities that EPA has determined or will determine are required at the Site. EPA is willing to discuss with you the entry of an appropriate administrative consent order under which you would perform or finance response activities and reimburse EPA for its costs.

If a consent order cannot be promptly concluded, EPA may issue a unilateral order under Section 106 of CERCLA, requiring you to perform specified work. Under Sections 106 and 107 of CERCLA, you may be liable for reimbursement of EPA's costs, for statutory penalties and for



treble damages for noncompliance with such an order. If you are a qualified small business, enclosed is a *U.S. EPA Small Business Resources Information Sheet*, which may be helpful if you are subject to an EPA enforcement action.

Because of the conditions described above, EPA believes that response activities at the Site must be initiated as quickly as possible. Therefore, EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

As a potentially responsible party, you should notify EPA in writing by September 28, 2012 of your willingness to perform or finance the activities described above and to reimburse EPA for its costs. Your response should be sent to:

Carol Ropski  
U.S. Environmental Protection Agency  
Superfund Division  
Enforcement and Compliance Assurance Branch  
Enforcement Services Section 1, SE-5J  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

If EPA does not receive a timely response, EPA will assume that your organization does not wish to negotiate a resolution of its potential responsibility in connection with the Site and that your organization has declined any involvement in performing the response activities.

Your response should indicate the appropriate name, address and telephone number for further contact with you. If you are already involved in discussions with state or local authorities, engaged in a voluntary cleanup action or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise you or direct you to restrict or discontinue any such activities already underway; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

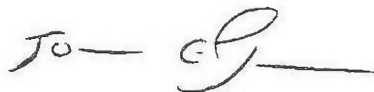
In addition, EPA has scheduled a meeting at Region 5's Chicago office on Wednesday, September 19 at 1:30 p.m. CDT to discuss the removal action and an agreed consent order. The meeting will be held at 77 West Jackson Boulevard in the Lake Superior Room on the 12<sup>th</sup> floor. For those unable to attend in person, a call in number is available. That number is 866-299-3188, conference code 312-353-8730. Please confirm or decline your attendance and indicate if it will be by phone or in person to [ropski.carol@epa.gov](mailto:ropski.carol@epa.gov).

If you need further information regarding this letter, you may contact Thomas Nash of EPA Office of Regional Counsel at 312-886-0552.



Due to the nature of the problem at this facility and the attendant legal ramifications, EPA strongly encourages you to submit a written response within the time frame specified herein. We hope you will give this matter your immediate attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jo - EJ', followed by a horizontal line.

Jason El-Zein, Chief  
Emergency Response Branch 1

Enclosure





**SOUTH DAYTON DUMP AND LANDFILL SITE**

**List of Potentially Responsible Parties Sent General Notice of Potential Liability**

Michael P. Bachevich  
2908 Springboro West  
Dayton, OH 45439  
[For A.E. Fickert, Inc.]

John H. Howland  
200 Providence Street  
P.O. Box 1007  
West Warwick, RI 02893  
[For Bradford Soap International, Inc.]

Bricker & Eckler, LLP  
Attn: Martha Horvitz  
100 South Third Street  
Columbus, OH 43215-4291  
[Dayton Power & Light Company]

CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114  
[For Flowserve Corporation]

NCR Corporation  
Attn: Brian Heath  
3097 Satellite Blvd, 2nd Floor  
Duluth, GA 30096

Cargill, Inc.  
Attn: Christopher Haack  
15407 McGinty Road West, MS-24  
Wayzata, MN 55391

KMK Service Corporation,  
1 East Fourth Suite #1800  
Cincinnati, OH 45202  
[For Cintas Corporation]



✓ Corporation Trust Center  
1209 Orange Street Wilmington  
New Castle, DE, 19801  
[For Coca Cola Enterprise, Inc.]

Dinsmore & Shohl LLP  
Attn: Timothy Hoffman  
1100 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, OH 45402  
[For Kathryn Boesch]

Dinsmore & Shohl LLP  
Attn: Timothy Hoffman  
1100 Courthouse Plaza, S.W.  
10 North Ludlow Street  
Dayton, OH 45402  
[For Margaret Grillot]

The Prentice Hall Corporation System, Inc.,  
50 West Broad Street  
Suite 1800  
Columbus, OH 43215  
[For Cox Media Group Ohio, Inc]

CSC- Lawyers Incorporating Service  
50 West Broad Street  
Suite 1800  
Columbus, OH 43215  
[DAP Products, Inc.)

CSC-Lawyers Incorporating Service  
50 West Broad Street  
Suite 1800  
Columbus, OH 43215  
[For Day International, Inc.]

David M. Hussong  
1880 Radio Road  
Dayton, OH 45431





Dayton Power & Light Company  
Attn: Athan Vinolus  
MacGregor Park  
1065 Woodman Drive  
Dayton, OH 45432

CT Corporation System,  
111 Eighth Avenue  
New York, New York, 10011  
[For Flowserve Corporation]

Mark R. Chilson  
9277 Centre Pointe Drive  
Suite 100  
West Chester, OH 45069  
[For Franklin Iron & Metal Corp.]

The Prentice Hall Corporation System, Inc.,  
50 West Broad Street  
Suite 1800  
Columbus, OH 43215  
[For DAP Products Inc.]

CSC - Lawyers Incorporating Service  
50 West Broad Street  
Columbus, OH 43215  
[For Harris Corporation]

Illinois Tool Works, Inc.  
Attn: Ken Brown  
3600 West Lake Avenue  
Glenview, IL 60025-5811  
[For Hobart Corporation]

John R. Jurgensen Company  
Attn: Daniel Crago  
1901 Dryden Road  
Moraine, OH 45439



CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114  
[Kimberly-Clark Corporation]

CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114  
[For L.M. Berry]

CT Corporation System,  
1300 East Ninth Street,  
Cleveland, OH 44114-0000  
[For Meredith Corporation]

CSC- Lawyers Incorporating Service  
50 West Broad Street  
Suite 1800  
Columbus, OH 43215  
[For The Sherwin-Williams Company]

CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114  
[For The Ohio Bell Telephone Company]

Carl M. Bridges  
P.O. Box 1296  
Dayton, OH 45401  
[For The Peerless Transportation Company]

CT Corporation System  
4400 Easton Commons Way  
Suite 125  
Columbus, OH 43219  
[For The Reynolds and Reynolds Company]

The Corporation Trust Company Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801  
[For Pepsi-Cola General Bottlers of Ohio, Inc.]



CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114  
[For The Standard Register Company]

TRW  
f/k/a Dayton-Walther, Kelsey Hayes  
Attn: Scott Blackhurst  
24175 Research Drive  
Farmington Hills, MI 48335

Valley Asphalt Corporation  
Attn: Dan Crago  
11641 Mosteller Road  
Cincinnati, OH 45241

Waste Management, Inc.  
f/k/a Industrial Waste Disposal  
Attn: Michelle Gale, Esq.  
720 Butterfield Road  
Lombard, IL 60148





National Registered Agents, Inc.  
145 Baker Street  
Marion, OH 43302  
[for Bridgestone Americas Tire Operations, LLC]

CSC-LAYWERS INCORPORATING SERVICE  
50 West Broad Street, Suite 1800  
Columbus, OH, 43215  
[For Monsanto Company]

CSC-Lawyers Incorporating Service  
(Corporation Service Company)  
50 West Broad Street, Suite 1800  
Columbus, OH 43215  
[For GlaxoSmithKline L.L.C.]



## **EXHIBIT A**





United States of America  
State of Ohio  
Office of the Secretary of State

v C2549Pg 134

*I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show AEF ACQUISITION COMPANY, INC., an Ohio corporation, Charter No. 1463884, having its principal location in Mason, County of Warren, was incorporated on May 17, 2004 and is currently in GOOD STANDING upon the records of this office.*



*Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio  
this 18th day of March, A.D. 2005*

*J. Kenneth Blackwell*

Ohio Secretary of State

Validation Number: V200577M5758D



## **EXHIBIT B**





Prescribed by **J. Kenneth Blackwell**

Ohio Secretary of State  
Central Office: (614) 466-3910  
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

[www.state.oh.us/sos](http://www.state.oh.us/sos)

e-mail: [busserv@sos.state.oh.us](mailto:busserv@sos.state.oh.us)

Expedite this Form: (Select One)	
<input type="radio"/> Yes	PO Box 1390 Columbus, OH 43216 *** Requires an additional fee of \$100 ***
<input checked="" type="radio"/> No	PO Box 788 Columbus, OH 43216

## STATUTORY AGENT UPDATE

(For Domestic or Foreign, Profit or Non-Profit)  
Filing Fee \$25.00

THE UNDERSIGNED DESIRING TO FILE A:

(CHECK ONLY ONE (1) BOX)

<b>(1) Subsequent Appointment of Agent</b> <input type="checkbox"/> Corp <input type="checkbox"/> LP (165-AGS) <input type="checkbox"/> LLC (171-LSA)	<b>(2) Change of Address of an Agent</b> <input checked="" type="checkbox"/> Corp <input type="checkbox"/> LP (145-AGA) <input type="checkbox"/> LLC (144-LAD)	<b>(3) Resignation of Agent</b> <input type="checkbox"/> Corp <input type="checkbox"/> LP (155-AGR) <input type="checkbox"/> LLC (152-LAG)
---	--	--

Complete ALL of the general information in this section for the box checked above.

Name of Entity A.E. FICKERT & SON, INC.

Charter or  
Registration No. 1463884

Name of Current Agent Michael P. Bacavich

Complete the information in this section if box (1) is checked.

Name and Address of  
New Agent

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(County)

Ohio  
(State)

(Zip Code)

### ACCEPTANCE OF APPOINTMENT

The Undersigned, \_\_\_\_\_, named herein as  
the Statutory agent for, \_\_\_\_\_, hereby acknowledges and  
accepts the appointment of statutory agent for said entity.

Signature: \_\_\_\_\_

(Statutory Agent)

\* If the entity listed is a foreign corporation, the agent does not have to sign the Acceptance of Appointment.



Complete the information in this section if box (2) is checked.

Old Address of Agent 4858 White Blossom Blvd.  
 (Street) NOTE: P.O. Box Addresses are NOT acceptable.

Mason Ohio 45040  
 (City) (State) (Zip Code)

New Address of Agent 2908 Springboro West  
 (Street) NOTE: P.O. Box Addresses are NOT acceptable.

Dayton Ohio 45439  
 (City) (State) (Zip Code)

Complete the information in this section if box (3) is checked.

Is this agent resigning? ☐ Yes ☐ No

Current or last known address  
 of the entity's principal office  
 where a copy of this Resignation  
 of Agent was sent as of the date  
 of filing or prior to the date filed

(Street) NOTE: P.O. Box Addresses are NOT acceptable.

(City) (State) (Zip Code)

**REQUIRED**

Must be authenticated (signed) by an  
 authorized representative  
 (See instructions)

Michael P. Sweeney  
 Authorized Representative

3/17/05  
 Date





## **EXHIBIT C**



**\*200509102454\***

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
2005	200509102454	DOMESTIC AGENT ADDRESS CHANGE (AGA)	25.00	.00	.00	.00	.00

**Receipt**

This is not a bill. Please do not remit payment.

KEATING MUETHING & KLEKAMP PLL  
KIMBERLEY S SMITH  
ONE E 4TH ST #1400  
CINCINNATI, OH 45202

**STATE OF OHIO  
CERTIFICATE**

**Ohio Secretary of State, J. Kenneth Blackwell**

**1463884**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

**A.E. FICKERT & SON, INC.**

and, that said business records show the filing and recording of

Document(s):

**DOMESTIC AGENT ADDRESS CHANGE**

Document No(s):

**200509102454**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio  
this 21st day of March, A.D. 2005.

*J. Kenneth Blackwell*  
Ohio Secretary of State



## **EXHIBIT D**



**\*200733002250\***

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
11/27/2007	200733002250	DOMESTIC/AMENDMENT TO ARTICLES (AMD)	50.00	.00	.00	.00	.00

**Receipt**

This is not a bill. Please do not remit payment.

KEATING, MUETHING & KLEKAMP, P.L.L.  
1400 PROVIDENT TOWER  
CINCINNATI, OH 45202

**STATE OF OHIO  
CERTIFICATE**

**Ohio Secretary of State, Jennifer Brunner**

**1463884**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

**A.E. FICKERT, INC.**

and, that said business records show the filing and recording of:

Document(s):  
**DOMESTIC/AMENDMENT TO ARTICLES**

Document No(s):  
**200733002250**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio  
this 26th day of November, A.D.  
2007.

A handwritten signature in cursive script, appearing to read "Jennifer Brunner".

Ohio Secretary of State





## **EXHIBIT E**



**B 149 132****RECEIPT AND CERTIFICATE****Nº 5342****A. E. FICKERT & SON, INC.**

NAME

NUMBER

**DOMESTIC CORPORATIONS**

✓ ARTICLES OF INCORPORATION  
 AMENDMENT  
 MERGER/CONSOLIDATION  
 DISSOLUTION  
 AGENT  
 RE-INSTATEMENT  
 CERTIFICATES OF CONTINUED  
 EXISTENCE  
 MISCELLANEOUS

**FOREIGN CORPORATIONS**

LICENSE  
 AMENDMENT  
 SURRENDER OF LICENSE  
 APPOINTMENT OF AGENT  
 CHANGE OF PRINCIPAL OFFICE  
 RE-INSTATEMENT  
 FORM 7  
 PENALTY

**MISCELLANEOUS FILINGS**

ANNEXATION/INCORPORATION—CITY  
 OR VILLAGE  
 RESERVATION OF CORPORATE NAMES  
 REGISTRATION OF NAME  
 REGISTRATION OF NAME RENEWALS  
 REGISTRATION OF NAME—CHANGE  
 OF REGISTRANTS ADDRESS  
 TRADE MARK  
 TRADE MARK RENEWAL  
 SERVICE MARK  
 SERVICE MARK RENEWAL  
 MARK OF OWNERSHIP  
 MARK OF OWNERSHIP RENEWAL  
 EQUIPMENT CONTRACT/CHattel  
 MORTGAGE  
 POWER OF ATTORNEY  
 SERVICE OF PROCESS  
 MISCELLANEOUS  
 ASSIGNMENT—TRADE MARK, MARK  
 OF OWNERSHIP, SERVICE MARK

I certify that the attached document was received and filed in the office of TED W. BROWN, Secre-  
 tary of State, at Columbus, Ohio, on the 23rd day of March, A. D. 1960, and  
 recorded on Roll B149 at Frame 132 of the RECORDS OF INCORPORATION and MIS-  
 CELLANEOUS FILINGS.

*Ted W. Brown*

TED W. BROWN,  
 Secretary of State

Filed by and Returned To:

J. R. Aiken551 South Main St.Englewood, OhioFEE RECEIVED \$ 25.00NAME A. E. FICKERT & SON, INC.7129



B-149 133

289208

## ARTICLES OF INCORPORATION

OF

A. E. PICKERT &amp; SON, INC.

APPROVED

By

Date

Amend

3-22-60

71-29

The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation for profit under the General Corporation Act of Ohio, do hereby certify:

FIRST: That the name of the corporation shall be "A. E. Pickert & Son, Inc."

SECOND: That the place in the State of Ohio where the principal office of the corporation is to be located is 1105 Kammer Avenue, Dayton, Ohio.

THIRD: The purpose or purposes for which the corporation is formed are:  
To conduct a general contracting business for the construction, alteration, repair, remodeling, and purchase and sale of buildings and residences and appurtenances and land; particularly to contract for the repair of fire and wind damage; to purchase, operate, lease, rent, sell, mortgage or otherwise encumber real and personal property; to borrow money; and to do any and all things necessary and incident to the accomplishment of the foregoing purposes.

FOURTH: The authorized number of shares of the corporation shall be two hundred and fifty (250), all of which shall be without par value.

FIFTH: The amount of capital with which the corporation shall begin to carry on business is One Thousand (\$1,000.00) Dollars.

IN WITNESS WHEREOF we have hereunto subscribed our names this 21 day of March, in the year of Our Lord 1960.

A. E. Pickert  
A. E. Pickert

Samuel Pickert  
Samuel Pickert

J. E. Allen  
J. E. Allen



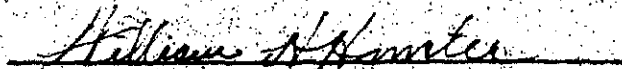
**B 149 134**

State of Ohio,

Montgomery County, ss

On the 21 day of March, 1960, personally appeared before me, the undersigned, a Notary Public in and for said County and State, the above named A. E. Fickert, Darrell Fickert and J. R. Aiken who each severally acknowledged the signing of the foregoing articles of incorporation to be his free act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal on the day and year last aforesaid.



Notary Public, HUNTER, Notary Public  
In and for Montgomery County, Ohio.  
My Commission Expires Dec. 29, 1961

This instrument prepared by  
Richard Oldham, Attorney,  
Englewood, Ohio.





**B 149 135****ORIGINAL APPOINTMENT OF AGENT FOR****OHIO CORPORATION**

The undersigned, being at least a majority of the incorporators of  
"A. E. Fickert & Son, Inc." hereby appoint J. R. Aiken of 551 South Main  
Street, Englewood, Ohio, a natural person resident of the county in which the  
corporation has its principal office, upon whom any process, notice or demand  
required or permitted by statute to be served upon the corporation may be  
served. His complete address is 551 South Main Street, Village of Englewood,  
Montgomery County, Ohio.

  
A. E. Fickert & Son, Inc.  
A. E. Fickert  
Darrell Fickert  
J. R. Aiken.

Dayton, Ohio

March 21, 1960.

A. E. Fickert &amp; Son, Inc.

Gentlemen: I hereby accept appointment as agent of your corporation upon  
whom process, tax notices or demands may be served.

  
J. R. Aiken.



## **EXHIBIT F**



**United States of America  
State of Ohio  
Office of the Secretary of State**

*I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show A. E. FICKERT & SON, INC., an Ohio corporation, Charter No. 289208, having its principal location in Dayton, County of Montgomery, was incorporated on March 23, 1960 and is currently in GOOD STANDING upon the records of this office.*



*Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio  
this 27th day of May, A.D. 2004*

A handwritten signature in cursive script that reads "J. Kenneth Blackwell".

Ohio Secretary of State

Validation Number: V2004147M1B422



## **EXHIBIT G**







Prescribed by **J. Kenneth Blackwell**

Ohio Secretary of State  
Central Ohio: (614) 466-3910  
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.state.oh.us/sos  
e-mail: busserv@sos.state.oh.us

Expedite this Form: (Select One)	
Mail Form to one of the Following:	
<input type="radio"/> Yes	PO Box 1390 Columbus, OH 43216 *** Requires an additional fee of \$100 ***
<input type="radio"/> No	PO Box 1028 Columbus, OH 43216

**Certificate of Amendment by  
Shareholders or Members**

(Domestic)  
Filing Fee \$50.00

(CHECK ONLY ONE (1) BOX)

PLEASE READ INSTRUCTIONS			
(1) Domestic for Profit	<input type="checkbox"/> Amended (122-AMAP)	<input checked="" type="checkbox"/> Amendment (125-AMDS)	(2) Domestic Non-Profit
			<input type="checkbox"/> Amended (126-AMAN)
			<input type="checkbox"/> Amendment (128-AMD)

Complete the general information in this section for the box checked above.

Name of Corporation A.E. Fickert & Son, Inc.  
Charter Number 289208  
Name of Officer Robin S. Fickert and Darren Keith Fickert  
Title President and Secretary

☐ Please check if additional provisions attached.

The above named Ohio corporation, does hereby certify that:

☐ A meeting of the ☐ shareholders ☐ directors (non-profit amended articles only)

☐ members was duly called and held on \_\_\_\_\_  
(Date)

at which meeting a quorum was present in person or by proxy, based upon the quorum present, an affirmative vote was cast which entitled them to exercise \_\_\_\_\_ % as the voting power of the corporation.

☒ In a writing signed by all of the ☒ shareholders ☐ directors (non-profit amended articles only)  
☐ members who would be entitled to the notice of a meeting or such other proportion not less than a majority as the articles of regulations or bylaws permit.

RECEIVED

JUN 30 2004

J. KENNETH BLACKWELL  
SECRETARY OF STATE

Clause applies if amended box is checked.

Resolved, that the following amended articles of incorporations be and the same are hereby adopted to supercede and take the place of the existing articles of incorporation and all amendments thereto.



All of the following information must be completed if an amended box is checked.  
If an amendment box is checked, complete the areas that apply.

FIRST: The name of the corporation is: Fickert Devco, Inc.

SECOND: The place in the State of Ohio where its principal office is located is in the City of:

Dayton

(city, village or township)

Montgomery

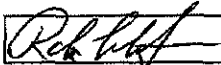
(county)

THIRD: The purposes of the corporation are as follows:

FOURTH: The number of shares which the corporation is authorized to have outstanding is: \_\_\_\_\_  
(Does not apply to box (2))

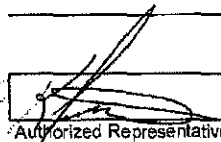
**REQUIRED**

Must be authenticated  
(signed) by an authorized  
representative  
(See Instructions)

  
Authorized Representative

Robin S. Fickert  
(Print Name)

6/21/04  
Date

  
Authorized Representative

Darren Keith Fickert  
(Print Name)

6/21/04  
Date



## **EXHIBIT H**





DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
07/01/2004	200418202282	DOMESTIC/AMENDMENT TO ARTICLES (AMD)	50.00	.00	.00	.00	.00

**Receipt**

This is not a bill. Please do not remit payment.

YOUNG PRYOR LYNN & JERARDI  
130 WEST SECOND STREET  
DAYTON, OH 45402

# STATE OF OHIO CERTIFICATE

**Ohio Secretary of State, J. Kenneth Blackwell****289208**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

**FICKERT DEVCO, INC.**

and, that said business records show the filing and recording of:

Document(s)

**DOMESTIC/AMENDMENT TO ARTICLES**

Document No(s):

**200418202282**

United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of  
the Secretary of State at Columbus,  
Ohio this 30th day of June, A.D.  
2004.

*J. Kenneth Blackwell*  
Ohio Secretary of State





## **EXHIBIT I**



**United States of America  
State of Ohio  
Office of the Secretary of State**

*I, Jon Husted, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign business entities; that said records show FICKERT DEVCO, INC., an Ohio corporation, Charter No. 289208, having its principal location in Dayton, County of Montgomery, was incorporated on March 23, 1960 and is currently in GOOD STANDING upon the records of this office.*



*Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio  
this 3rd day of June, A.D. 2013*

*Jon Husted*

Ohio Secretary of State

Validation Number: V2013154JCBE27

